

**December 2000**

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# COURTHOUSE CONSTRUCTION

## Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue

**G A O****Accountability \* Integrity \* Reliability**

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**United States General Accounting Office**  
**Washington, D.C. 20548**

December 14, 2000

The Honorable Ben Nighthorse Campbell  
Chairman  
The Honorable Byron L. Dorgan  
Ranking Minority Member  
Subcommittee on Treasury and General Government  
Committee on Appropriations  
United States Senate

The Honorable C.W. Bill Young  
Chairman  
The Honorable David Obey  
Ranking Minority Member  
Committee on Appropriations  
House of Representatives

The Honorable Bud Shuster  
Chairman  
The Honorable James L. Oberstar  
Ranking Democratic Member  
Committee on Transportation and Infrastructure  
House of Representatives

The Honorable Bob Franks  
Chairman  
The Honorable Bob Wise  
Ranking Democratic Member  
Subcommittee on Economic Development, Public Buildings,  
Hazardous Materials, and Pipeline Safety  
Committee on Transportation and Infrastructure  
House of Representatives

This report responds to Senate and House reports<sup>1</sup> that direct us to review and comment on part of the May 2000 Ernst & Young (EY) study on the

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<sup>1</sup> S. Rep. No. 106-500, at 66 (2000); H.R. Rep. No. 106-756, at 65 (2000).

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judiciary's space and facilities program.<sup>2</sup> Specifically, we were asked to review the study as it relates to courtroom use and sharing. The House report directed us to report our results to the House Committee on Appropriations and the House Committee on Transportation and Infrastructure. The Senate report directed us to provide our results to Congress. We are providing our results to the Chairman and Ranking Member of the Senate Appropriations Subcommittee on Treasury and General Government to fulfill the Senate report requirement. The Chairman and Ranking Democratic Member of the House Subcommittee on Economic Development, Public Buildings, Hazardous Materials, and Pipeline Safety also asked us to review the study as it pertains to courtroom use and sharing.

The judiciary is in the midst of a multibillion-dollar courthouse construction initiative. New courthouses are being built to accommodate new judgeships created because of increasing caseloads and to replace obsolete courthouses occupied by existing judges. For several years, there has been much debate about whether district judges could share courtrooms—operate in a courthouse with fewer courtrooms than judges—to save taxpayer dollars without compromising effective judicial administration. There has been a belief among certain key stakeholders outside the judiciary—various subcommittees and Members of Congress as well as the Office of Management and Budget (OMB)—that courtroom sharing may be possible and could lead to cost savings. The judiciary has instituted a policy for sharing courtrooms among visiting judges—judges from other locations who temporarily use courtrooms—and senior judges who have reduced caseloads.<sup>3</sup> However, the judiciary and other key stakeholders believe that the judiciary should retain its one-judge, one-courtroom policy for active district judges because of the negative effects courtroom sharing may have on effective judicial administration. Nonetheless, many stakeholders and some organizations that have done research in the area have recognized that existing data and analysis on courtroom use were limited and could not resolve the courtroom-sharing debate, and more data and analysis were needed.

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<sup>2</sup> *Independent Assessment of the Judiciary's Space and Facilities Program*, Ernst & Young, May 2000.

<sup>3</sup> The judiciary has two categories of district judges who hear cases and use courtrooms. Active district judges carry full caseloads. District judges with senior status, who we refer to in this report as senior judges, have resigned from their active judgeships, but continue to carry a full or partial caseload.

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In 1997, we issued a report that called for better courtroom use data and analysis to enhance facility planning and decisionmaking.<sup>4</sup> In that report, we recognized that the process for administering justice is dynamic and complex and that the availability of a trial courtroom is an integral part of the judicial process because judges need the flexibility to resolve cases efficiently. However, we also noted that trial courtrooms, because of their size and configuration, are expensive to construct—EY estimated in its study that a typical courtroom costs about \$1.5 million. In doing the work for the 1997 report, we found that the judiciary had not compiled data on how often and for what purposes courtrooms were actually used and did not have analytically based criteria for determining how many and what types of courtrooms were needed to effectively administer justice. Given this, we analyzed various detailed records and documents at seven geographically dispersed court locations—Dallas, TX; Miami, FL; Albuquerque, Santa Fe, and Las Cruces, NM; San Diego, CA; and Washington, D.C.—to develop data on actual courtroom use.

Our 1997 analysis of actual courtroom use for trials and nontrial activities<sup>5</sup> at these locations suggested there may be opportunities to reduce costs by building fewer full-sized trial courtrooms. Although our results were not generalizable to all district courtrooms, our analysis showed that during 1995, courtrooms on average were used for trials less than one-third of 250 federal workdays. Active district judges used their courtrooms, on average, about 65 percent of the days for trial and nontrial purposes; senior judges used their courtrooms only about 38 percent of the days. We also noted that for a significant number of days, the courtrooms were used for only 2 hours or less, and at least one courtroom in each of two courthouses was unused every workday of the year. However, in reporting these results, we recognized that our data collection and analysis effort was limited in scope in that we visited only seven locations and collected data for only a 1-year period. Because of the lack of data, we were also unable to reflect other factors in our analysis, such as latent use—using an available courtroom and the scheduling of that courtroom as leverage to encourage case settlements—and scheduling uncertainties that the judiciary believes are important in determining the number of courtrooms needed. These

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<sup>4</sup>*Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking* (GAO/GGD-97-39, May 19, 1997).

<sup>5</sup> Nontrial activities include events such as arraignments and motion hearings.

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limitations prevented us from conclusively determining whether and to what extent courtroom sharing may be feasible.

Consequently, we recommended that the judiciary design and implement cost-effective research to fully examine the courtroom use issue. Specifically, we recommended that as part of this research, the judiciary should (1) establish criteria for determining effective courtroom utilization and a mechanism for collecting and analyzing data at a representative number of locations so that trends can be identified over time and better insights obtained on court activity and courtroom usage; and (2) design and implement a methodology for capturing and analyzing data on latent use, courtroom scheduling, and other factors that may substantially affect the relationship between the availability of courtrooms and judges' ability to effectively administer justice. The development of actual courtroom use data may be time-consuming and difficult to pursue because of the lack of readily available court records or other mechanisms for capturing information on how courtrooms were used. However, given the results of our 1997 courtroom use report and the significant taxpayer dollars being invested to replace obsolete facilities and accommodate new judgeships, this research would be worth pursuing because significant savings could result if fewer million-dollar trial courtrooms need to be constructed. Further, without actual courtroom use data that could be used to analyze the potential for sharing, the debate over sharing will continue to be based on judgment that is not, in our view, supported by a methodologically sound analysis of empirical evidence.

In commenting on our 1997 report, the Administrative Office of the U.S. Courts (AOC), which is the judiciary's administrative arm, said the judiciary should aggressively monitor both the effects of its ongoing efforts to reduce space usage and its newly adopted initiatives related to courtroom sharing among senior and visiting judges before it embarks on an extensive and time consuming study of courtroom use. AOC went on to say that the continuing study of the need for courtrooms should be conducted by those who are most knowledgeable in this area, that is, federal judges.<sup>6</sup> In 1999, to address the courtroom-sharing issue and identify ways to improve its space and facilities efforts, AOC contracted with EY to conduct a study of the judiciary's facilities program. As part of the study, AOC asked EY to conduct a thorough analysis of courtroom utilization, assignment, and sharing by judges. As agreed with your offices, our objective was to

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<sup>6</sup> AOC's comments and our evaluation of them are contained in our 1997 report.



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determine whether the EY study provided sufficient data and analysis to show if, and to what extent, courtroom sharing may be feasible. To meet this objective, we obtained the EY study and analyzed those areas that pertained to courtroom use and sharing and discussed our analysis with AOC officials and the EY staff who worked on the study. We also discussed the study with representatives from OMB and the Congressional Budget Office (CBO). In addition, we reviewed previous studies on or related to courtroom use as well as AOC's contract file for the study. We did our work between June and September 2000 in accordance with generally accepted government auditing standards. A more detailed description of our objective, scope and methodology is in appendix I. We received written comments on a draft of this report from EY, AOC, and the Chair of the Judicial Conference's Committee on Security and Facilities. These comments are discussed near the end of this letter.

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## Results in Brief

The EY study, as it pertained to the need for courtrooms, was informative in that it provided current information on issues related to courtroom use and the potential for sharing courtrooms. However, the EY study was not designed to provide the type of data and analysis we and other research organizations such as the Rand Institute for Civil Justice (Rand) and the Federal Judicial Center (FJC), the judiciary's research arm, have determined would be needed to help resolve the courtroom-sharing issue. AOC did not specifically require EY to develop these data and analysis; and, according to EY, to do so would have involved a level of resource commitment and time frames that were beyond the scope of its work. According to EY, such a data collection effort would have been extensive because court records do not adequately track courtroom usage; the frequency of proceedings; or uncertainties, such as delays and cancellations. In short, there continues to be a lack of actual courtroom usage data and analysis that show (1) how often and for what purposes courtrooms are being used and (2) the impact that other factors—such as courtroom scheduling uncertainties and latent use—may have in determining the need for courtrooms.

According to our work and assessments by these other research organizations, a cost-effective, empirical assessment that would generate actual courtroom use data is key to informed decisionmaking about the feasibility of courtroom sharing. Without these data, it is not possible to determine more conclusively whether courtroom-sharing opportunities exist. It is important that expert judgment and experience be used in interpreting empirical data on courtroom use. However, it is also important

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that such judgment supplement, not serve as a substitute for, empirical data and analysis on courtroom use. Given the significant taxpayer dollars being invested to replace obsolete courthouse facilities and accommodate new judgeships that are projected, it appears that the judiciary, Congress, and the administration would be well served by a methodologically sound, empirical study of the courtroom-sharing issue.

Although the EY study did not provide any new courtroom use data or perform the type of quantitative analysis we and others have recommended, it contained conclusions and recommendations that were based on an analysis of the potential for courtroom sharing. Our review showed that this analysis was problematic. The analysis, which suggested that five active judges cannot share four courtrooms, was based on a mathematical formula that (1) used a questionable flexibility factor to account for various uncertainties that may affect a courtroom scheduling process, such as whether a trial will actually take place and how long a trial will last, and (2) incorrectly used courtroom usage data from our 1997 report. Although the study identified several uncertainties that may affect courtroom scheduling, it provided no data, rationale, or analytical basis to support the 20 to 25 percent flexibility factor it used in its formula other than to say it was appropriate. According to EY staff, the 20 to 25 percent flexibility factor was based on the professional judgment of the staff doing the study, because there were limited empirical data available on how various uncertainties actually affect the need for a courtroom.

Furthermore, the flexibility factor could be viewed as excessive, considering that it was used in conjunction with a courtroom use measure we developed for our 1997 report that already contained a degree of flexibility that may have accommodated various uncertainties. Moreover, the formula incorrectly used our courtroom usage measure as a lights-on measure—the number of hours judges spent in the courtroom—when it was actually a measure of workdays when there was any use at all, even if the events lasted for less than an hour. Using our data as a lights-on measure overstated the number of hours judges actually spent in the courtrooms. It also did not recognize that a significant number of the workdays had events that lasted only 2 hours or less, leaving sufficient time to possibly accommodate unanticipated events. Both of these limitations raised questions about the merits of the analysis and the study's conclusions and recommendations regarding courtroom sharing.

This report contains recommendations to AOC that address the problems we identified. In commenting on a draft of this report, AOC had several

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serious concerns with the draft and did not agree with our recommendations. However, AOC did not provide any data, analysis, or rationale that would give us an adequate basis for changing or dropping our recommendations. Accordingly, we continue to believe that our recommendations are appropriate. Furthermore, given AOC's reluctance to implement our recommendations and the potential for savings if fewer trial courtrooms were built, we believe Congress should consider requiring AOC to provide persuasive courtroom use data and analysis, along with its views, to justify the number of courtrooms being requested in future courthouse construction projects before funding is approved.

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## Background

The judiciary is in the midst of a multibillion-dollar courthouse construction initiative. The judiciary's most recent 5-year construction plan proposed 50 new courthouse projects that are estimated to cost about \$3 billion. The General Services Administration (GSA) is responsible for building these facilities with input from various stakeholders, including Congress, OMB, and the judiciary. The Judicial Conference of the United States is the policymaking body for the judiciary. Currently, the judiciary follows a practice that each active district judge is assigned a dedicated courtroom, although the judiciary has taken steps to implement courtroom sharing among visiting judges and senior judges who have reduced caseloads. Over the years, there has been considerable debate about whether district judges should share courtrooms in new courthouse facilities to save taxpayer dollars—according to EY, each courtroom costs about \$1.5 million.

The debate over courtroom sharing has revolved around whether it would negatively affect the judiciary's efficiency and effectiveness. As previously mentioned, in 1997, we reported that our analysis of actual courtroom use for trial and nontrial activities at seven locations suggested there may be opportunities to reduce costs by building fewer full-sized trial courtrooms in the judiciary's multibillion-dollar courthouse construction initiative.<sup>7</sup> Our report recommended that the judiciary fully examine the courtroom use issue to form a better basis for determining the number and types of

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<sup>7</sup> At the request of a House Subcommittee, we also issued a companion report—*Courthouse Construction: Information on the Use of District Courtrooms At Selected Locations* (GAO/GGD-97-59R, May 19, 1997)—that provided data on courtroom use at four additional locations. Our findings on courtroom use at these additional locations were similar to our findings associated with the initial seven locations previously discussed.

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courtrooms needed and whether each district judge needs a dedicated courtroom. Before our report was issued, Rand and FJC had made similar recommendations. In commenting on our 1997 report, AOC requested that we recast the recommendation. Instead of recommending what it thought would be a time-consuming and expensive study of the courtroom usage issue, AOC requested that we recommend that the judiciary monitor the implementation of its policy initiatives on courtroom sharing among senior and visiting judges and facilities planning with regard to the impact on case management and effectiveness in contributing to its efforts to reduce space costs.

We chose not to recast our recommendation as AOC requested; it was our view that just monitoring these initiatives would be an incomplete basis for courtroom construction decisions because it would not include information and analysis on actual courtroom usage. Without actual courtroom use data, there would always be questions about how many full-sized trial courtrooms are really needed. There is a belief among certain key stakeholders outside the judiciary—various subcommittees and Members of Congress as well as OMB—that courtroom sharing may be possible and could lead to cost savings.

According to AOC officials, the judiciary and other stakeholders, including certain Members of Congress and several U.S. Attorneys, believe that the complexities associated with courtroom availability and effective judicial administration reduce the likelihood that sharing is feasible. The judiciary's position is that some sharing may be possible among visiting judges and senior district judges with reduced caseloads, but active district judges and senior judges with full caseloads need dedicated courtrooms. According to AOC officials, the judiciary and others believe that in addition to trial and nontrial activities, such as motion hearings and arraignments, other factors of uncertainty affect the need for courtrooms and make courtroom sharing more of a challenge. These factors include whether a case will go to trial, how long a trial will take, and whether an emergency proceeding will require immediate courtroom use. In addition, latent use would also have to be considered in determining the need for courtrooms. However, there currently is limited information to determine how often these factors may affect the need for a courtroom and the degree to which they may actually impede courtroom sharing. As we have reported in the past, the judiciary lacks data and analysis on courtroom use and, is therefore not in a good position to support its practice of providing a trial courtroom for every judge.

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In 1999, in an effort to address the courtroom-sharing issue and improve its space and facilities efforts, AOC contracted with EY to conduct a comprehensive review of its facilities program. With regard to courtroom sharing, AOC directed EY to conduct a thorough analysis of courtroom utilization, assignment, and sharing by judges. The EY study, among other things, concluded that courtroom sharing (1) would not be feasible in courthouses with fewer than 5 district courtrooms and (2) would result in significant scheduling problems in courthouses with 6 to 10 district courtrooms. The study also recommended that the judiciary retain its policy of providing a courtroom for every active district judge; however, it said that sharing at large courthouses—those with more than 10 district judges—may be possible and that senior judges can share courtrooms after the first 2 years of senior status.

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## Limited Data and Analysis Leave the Courtroom-Sharing Issue Unresolved

The EY study was informative in that it provided current information on issues related to courtroom use and the potential for sharing courtrooms. In doing their work, EY staff, among other things, visited federal courthouses, interviewed key stakeholders and judiciary personnel, and conducted focus groups with judges. A top AOC official who was involved with contracting for the study pointed out that as part of its work, EY visited 14 court locations, observed courtroom use and spoke with users, examined calendars, analyzed statistical data and courthouse planning documents, conducted interviews with dozens of individuals who had different experiences and views, and held focus groups.

Nevertheless, the EY study did not provide the type of research we and other research organizations, such as Rand and FJC, have said would be needed to help resolve the courtroom-sharing issue. The EY study clearly stated that EY did not attempt to collect new data on the use of courtrooms because, to be nationally representative, such a data collection effort would have involved a research commitment and a time frame that were beyond the scope of the study. The study also said that Rand concluded that fully researching the impact of courtroom sharing would require a 2- to 3-year study period. Through discussion of the study with AOC and EY staff and a review of the contract file for the study, we found that AOC did not specifically require EY to develop the type of data and analysis we and other organizations have recommended. According to a top AOC official involved with contracting for the study, AOC was under pressure from OMB and Congress to have the study completed within a year. According to this official, this time frame and budget restraints prevented AOC from

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having EY develop the type of data and analysis we and other organizations have recommended.

In 1997, we recommended that the judiciary design and implement cost-effective research to fully examine the courtroom use issue to form a better basis for determining the number and type of courtrooms needed as well as whether each district judge needs a dedicated courtroom. We reported that this effort should include

- establishing criteria for determining effective courtroom utilization and a mechanism for collecting and analyzing data at a representative number of locations so that trends can be identified over time and better insights obtained on court activity and courtroom use;
- designing and implementing a methodology for capturing and analyzing data on latent use, courtroom scheduling, and other factors that may substantially affect the relationship between the availability of courtrooms and judges' ability to effectively administer justice;
- using these data and criteria to explore whether the one-judge, one-courtroom practice is needed to promote efficient courtroom management or whether other courtroom assignment alternatives exist; and
- establishing an action plan with time frames for implementing and overseeing these efforts.

The courtroom use data we developed for our 1997 report, although not generalizable to all federal district courtrooms, suggested that there may be opportunities for the judiciary to reduce costs by building fewer trial courtrooms. We reported that opportunities to reduce costs would depend on the potential impact or benefits and costs of options, such as instituting courtroom-sharing practices; changing the configuration of courtrooms by building a mix of full-size and smaller, less expensive courtrooms or hearing rooms; or holding meetings or proceedings in facilities other than trial courtrooms, possibly by using audio or video technology.

Research prior to the issuance of our report also called for better data and analysis in this area. In March 1996, a study commissioned by AOC was released that used quantitative methods to recommend that the judiciary and GSA continue to build one courtroom for every active district judge.<sup>8</sup> The Judicial Conference's Committee on Court Administration and Case Management asked FJC, the judiciary's research arm, to critique this study. In August 1996, FJC praised the report for pointing out some of the limits of current data and the complexities of dealing with matters such as

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courtroom scheduling.<sup>9</sup> However, FJC concluded that the “limitations of the analysis, some of which are acknowledged in the report, substantially limit its value as a basis for any policy decisions.” FJC concluded that the findings and recommendations went beyond the data presented and that other more useful techniques might have been developed.

Rand also expressed concern about the March 1996 AOC-commissioned report. In September 1996, Rand issued a project memorandum, prepared under contract with AOC, that reviewed available research on courtroom sharing.<sup>10</sup> Rand found that previous research had been limited and did not resolve the courtroom-sharing issue. Similar to FJC, Rand questioned whether the March 1996 report explored various analytical techniques that could be applied to the courtroom-sharing concept. These techniques included advanced computer simulations using detailed, actual data on how courtrooms are used. Rand also questioned the assumption in the report that an additional scheduler would have to be employed by the judiciary in courthouses operating under a sharing scenario. Most importantly, Rand emphasized the need for further study on courtroom use issues, stressing the need for the judiciary to understand the effects of courtroom sharing on the judicial system when making facility decisions. Rand concluded the following:

“Making decisions without such an understanding presents two kinds of risks. On the one hand, reducing the courtroom-per-judge ratio may unacceptably impair the ability of the federal court system to meet its judicial obligations and may have other potentially negative effects. On the other hand, not reducing the ratio may forego an opportunity to save taxpayer dollars.”

Rand suggested that the judiciary, Congress, AOC, and GSA would be well served by a methodologically sound, empirical study that would require investigating the effects of varying the courtroom-to-judge ratio. A more detailed description of the March 1996 AOC-commissioned study, the FJC

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<sup>8</sup> Edward H. Leekley and William T. Rule II, *The Impact of Providing Fewer Than One Courtroom Per Judgeship: Report to the Committee on Security, Space, and Facilities of the Judicial Conference of the United States*, Washington, D.C., March 1996.

<sup>9</sup> Federal Judicial Center Research Note on *The Impact of Providing Fewer Than One Courtroom Per Judgeship*, Federal Judicial Center, August 28, 1996.

<sup>10</sup> Terence Dunworth and James S. Kakalik, *Research on Courtroom Sharing, Project Memorandum*, Rand Institute for Civil Justice, PM-598—1-ICJ, September 1996.

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critique, and the Rand report is contained in our May 1997 report on courtroom use.<sup>11</sup>

As previously mentioned, AOC did not require EY to carry out the research we and others recommended. The EY staff we interviewed said that such an effort would have involved much more time and resources than they had allotted to the subject, which was part of a broader study they were tasked with completing. Given this, there continues to be a lack of actual courtroom usage data that show (1) how often and for what purposes courtrooms are being used and (2) the impact that other factors—such as courtroom scheduling uncertainties and latent use—may have in determining the need for courtrooms. Although expert judgment should be considered in determining the merits of courtroom sharing, it is clear to us that the courtroom-sharing issue is not going to be resolved without better data and analysis on actual courtroom use.

Terence Dunworth, a co-author of the 1996 Rand study and consultant to AOC on courtroom use issues, agreed that the existing research did not resolve the issue of whether courtroom sharing can take place without adverse consequences. Dunworth said that the judiciary still needs to invest in an empirical assessment of the courtroom-sharing issue; otherwise, decisions will continue to be made on the basis of opinion and judgment. Given the results of our 1997 report on courtroom use and the significant taxpayer dollars that will continue to be invested to replace obsolete facilities and accommodate growth, it is our view that the judiciary, Congress, and the administration would be well served by a methodologically sound analysis of the courtroom-sharing issue that is based on empirical evidence.

This type of study may be time consuming and involve an extensive effort to develop actual courtroom use data because of the lack of readily available court records or other mechanisms for capturing information on how courtrooms were used. In addition, once these data are collected, the study would have to carefully consider the type of analytical techniques to be used. For example, in EY's opinion, it would not be possible to use the regression analysis technique because of the difficulties of predicting trial length. However, as Rand indicated, advanced forms of computer simulations show the best potential for exploring the feasibility of overall courtroom sharing. Despite these challenges, this research would be worth

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<sup>11</sup> GAO/GGD-97-39.



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pursuing because significant savings could result if fewer million-dollar trial courtrooms need to be constructed now and in the future. Further, without actual courtroom use data that could be used to analyze the potential for sharing, the debate over sharing will continue to be based on speculation rather than on a methodologically sound analysis of empirical evidence.

It is important to recognize that AOC has taken some actions that relate to courtroom sharing, such as the EY study, policy changes made by the judiciary to consider sharing among senior judges with reduced caseloads, and changes made to the judiciary's courthouse construction design guide to consider sharing opportunities. Regarding sharing by senior judges, each federal circuit now has some type of policy to encourage courtroom sharing among senior judges on the basis of criteria established by each circuit. These criteria include workload, the number of years judges are expected to continue working, and an evaluation of how courtrooms are used in existing facilities. According to the EY study, 38 of the proposed projects in the judiciary's 5-year construction plan that EY analyzed anticipate courtroom sharing, with 274 courtrooms planned for 347 judges. With the exception of one of these projects, this sharing involves only senior and visiting judges and not active district judges. Nonetheless, we view these initiatives as steps in the right direction. However, despite these steps and AOC's and EY's efforts to contact various stakeholders during the study on the judiciary's space and facilities program, the judiciary has not reached up-front agreement with key stakeholders on what type of cost-effective research could be pursued—including development of study objectives, potential methodologies, and reasonable approaches—that would help resolve the debate over the courtroom-sharing issue and identify the full potential of courtroom sharing.

We made recommendations to the judiciary in this report to do the needed research to help resolve the courtroom-sharing issue. In commenting on a draft of this report, AOC disagreed with the recommendations because it believes that implementing them would be costly and unproductive. However, AOC provided no support for its assertions and offered no other options, other than to say that the judiciary has no interest in constructing courtrooms that are not needed. Given AOC's reluctance to do the needed research and the potential savings that could be derived from building fewer expensive trial courtrooms, Congress should consider requiring AOC to provide persuasive courtroom use data and analysis, along with its views, to justify the number of courtrooms being requested for each proposed courthouse construction project before funding is approved.

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The actual courtroom use data and analysis could supplement the standardized courtroom utilization studies that are currently required by the annual appropriations acts that fund courthouse construction projects. Since fiscal year 1997, appropriations acts providing funding for courthouse construction have contained this requirement.<sup>12</sup> However, the utilization studies provided were general in nature and were primarily limited to identifying courtroom assignments for judges. They did not contain actual data and analysis on how often and for what purposes courtrooms were being used or the impact that other factors—such as courtroom scheduling uncertainties or latent use—may have on determining the need for courtrooms.

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## EY'S Analysis of Opportunities for Sharing was Problematic

Although the EY study did not provide new courtroom use data or perform the type of quantitative analysis we and others have recommended, it contained conclusions and recommendations that were based on an analysis of the potential for courtroom sharing. Our review of this analysis showed that it was problematic. The analysis was based on a mathematical formula—which EY acknowledged was simplistic in the study—that used a questionable flexibility factor to account for various uncertainties that may affect courtroom scheduling and incorrectly used data from our 1997 report on courtroom use. Both limitations raised questions about the merits of the analysis and the study's (1) conclusions that courtroom sharing would not be feasible in courthouses with fewer than 5 district courtrooms and would result in significant scheduling problems in courthouses with 6 to 10 district courtrooms; and (2) recommendations that the judiciary should retain the 1-judge, 1-courtroom policy for active district judges and provide 1 courtroom for every 2 senior judges.

More specifically, in using its formula to conclude that five judges could not share four courtrooms, EY used a flexibility factor of 20 to 25 percent to account for various uncertainties that may affect courtroom scheduling, such as whether a trial will actually take place, how long a trial will last, and whether an emergency proceeding will require immediate courtroom use. However, the study was silent on how the flexibility factor was determined. The study provided no data, rationale, or analytical basis to support the 20 to 25 percent flexibility factor, saying only that EY decided that the estimates were appropriate. Thus, there is no link between the

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<sup>12</sup>See Treasury and General Government Appropriations Act for Fiscal Year 2000, Public Law No. 106-58, §404, 113 stat. 430, 453 (1999) for this provision.

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basis for EY's judgment—stakeholder input and observations—and the specific percentages that EY decided to use. EY staff said that they developed the estimate using their professional judgment based on the work they did on the study, including discussions with judges and other judiciary officials, because there were limited empirical data available on how various uncertainties actually affect the need for a courtroom. Also, it is interesting to note that if a 15 percent flexibility factor were used in the formula, the results suggest that five judges could share four courtrooms.<sup>13</sup> Furthermore, as discussed below, the 20 to 25 percent flexibility factor could be viewed as excessive considering that it was used in the formula in conjunction with a courtroom use measure that already contained a degree of flexibility that may have accommodated various uncertainties. Without better data on the impact that these uncertainties may have on the need for a courtroom, it is difficult to gauge whether they are obstacles to the potential for sharing.

In addition to our concerns with the flexibility factor, we also noted that EY incorrectly used the courtroom use data from our 1997 report. EY's mathematical formula used the 65 percent courtroom use measure for active district judges as an actual, lights-on courtroom use measure—the number of hours judges spent in the courtrooms—when in fact it was a percentage of workdays that the courtroom was used for any activity. As pointed out in our report, if courtroom events took less than an hour and the courtroom was unused for the rest of the day, we credited the courtroom with a full day of use for that day. We did not pursue a lights-on measure because, at the time of our review, court records did not allow us to determine the exact number of hours courtrooms were actually used for trials. However, we were able to determine the number of hours and the specific days that courtrooms were used for nontrial activities, and in our report we presented a separate analysis showing how many of these days had events lasting a total of 2 hours or less. Because trial and nontrial times were recorded differently, we chose to present the actual courtroom use data in terms of the percentage of workdays used. Consequently, by using our courtroom measure as a lights-on measure, EY overstated the number of hours judges spent in the courtrooms and did not recognize that a significant number of workdays had events that lasted 2 hours or less.

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<sup>13</sup> It is important to note that it was not our intent to suggest that five judges can actually share four courtrooms, but rather to demonstrate the limitations associated with EY's analysis.

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When EY used our courtroom use measure as a lights-on measure in its formula, the results suggested that five judges could not share four courtrooms. For example, the EY study contained the following calculation:

- $.65$  (utilization rate) +  $.25$  (flexibility factor) =  $.9$  (courtrooms per judge)
- $.9 \times 5 = 4.5$  (equivalent courtrooms)

This analysis showed that using the 25 percent flexibility factor and rounding the 4.5 figure upward result in the conclusion that five judges would need five courtrooms.

Because EY's analysis is predicated on using a lights-on measure of courtroom use, we tested EY's formula to determine if EY's incorrect use of our data affected its results. We converted our 65-percent measure to more of a lights-on measure by removing some of the hours for which we were certain that no activity occurred. Specifically, when the courtrooms were used for 2 hours or less for nontrial activities on a given day, we credited the courtrooms with 2 hours of use instead of a full day, as was done for our 1997 report. This yielded a courtroom use percentage of about 50 percent, which, although not a pure lights-on measure, is closer to the type of measure upon which EY's formula was predicated.<sup>14</sup> Using a 50-percent use measure and incorporating EY's 25-percent flexibility factor, EY's analysis suggested that five judges could in fact share four courtrooms, as shown in the following formula:

- $.50$  (adjusted utilization rate) +  $.25$  (flexibility factor) =  $.75$  (courtrooms per judge)
- $.75 \times 5 = 3.75$  (equivalent courtrooms)

EY staff acknowledged that there was a discrepancy in their portrayal of our data as a lights-on measure. However, the EY staff said that they understood our data and, for the purpose of their analysis, the discrepancy was insignificant. They said they used the 65-percent figure because it was the best available measure of actual courtroom use. We do not share EY's view that this discrepancy was insignificant. As mentioned before, we

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<sup>14</sup> The objective, scope, and methodology section of this report, which is contained in appendix I, fully explains how we made this adjustment. Also, as mentioned before, it was not our intent to suggest that five judges can actually share four courtrooms, but rather to demonstrate the limitations associated with EY's analysis.

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recorded a day of use even if courtroom events lasted less than an hour. For example, about one-half of the days reflected in the 65 percent had only nontrial activity, and most of these days involved events that lasted 2 hours or less. Given this, there were a significant number of days when the courtrooms had time that may have been sufficient to accommodate various uncertainties or other events that may have been scheduled. Readers of the EY study could easily make the mistake of assuming that judicial business was actually being conducted 65 percent of the available hours. As shown above, if we adjusted our measure to more of a lights-on measure, the analysis would show a different result. The imprecise portrayal and use of our data, combined with the judgmental flexibility factor, raised questions about the merits of the analysis and EY's conclusions and recommendations regarding courtroom sharing.

We also noted that EY reported that 91 percent of courthouses have five or fewer active district judges, and EY used this fact to provide additional support for its recommendation that the judiciary retain the one-judge, one-courtroom practice. In EY's opinion, the potential for courtroom sharing throughout the country is small because most courthouses have five or fewer judges. We agree that, intuitively, sharing in smaller facilities may present more of a challenge for the judiciary than sharing in larger ones. However, we also believe that better data and analysis are needed to definitively determine the circumstances under which sharing is actually feasible. It is also interesting to note that even though 91 percent of the courthouses may have five or fewer active district judges, as EY reported, about 40 percent of all current, active district judges are located in the remaining 9 percent of the courthouses. From this perspective, the data show that a considerable percentage of active district judges are in large courthouses where, according to EY, sharing is likely to be more feasible.

We also were concerned about EY's use of the courthouse in Brooklyn, NY, to illustrate that scheduling courtrooms in an actual sharing scenario would be problematic. AOC officials told us that they urged EY to use Brooklyn as a case study because it was the only facility that was operating with fewer courtrooms than active district judges. Appendix B of EY's study points out that this facility has been partially demolished in preparation for a new courthouse and that it was difficult for EY to determine the extent to which operational difficulties were caused by courtroom sharing or by inadequate facilities. However, in the body of the study, EY said that operational difficulties in the Brooklyn courthouse demonstrated that courtroom sharing has been costly to administer in terms of staff time, disruptions, and ineffective administration of justice.

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Given the presence of the other variables related to the inadequacy of the facility, it is our view that the Brooklyn courthouse may not be a good example for demonstrating courtroom-sharing feasibility.

We also noted that the study provided data and analysis directly related to courtroom sharing for senior judges and in large courthouses with more than 10 district judges.<sup>15</sup> EY suggested that sharing is possible in these areas and, in particular, recommended that the judiciary provide one courtroom for every two senior judges. However, as previously discussed, the analysis used to determine if active district judges can share courtrooms—which was similarly applied in analyzing larger courthouses and senior judges’ use—was problematic. As a result, although data from our 1997 report indicated low levels of use among senior judges with reduced caseloads, we cannot comment on the merits of EY’s recommended 2-to-1 ratio. In our view, a reasonable ratio of courtrooms to senior judges and the specific circumstances under which senior judges should share courtrooms are still unknown. Regarding large courthouses, it seems from an intuitive standpoint that the potential for sharing does increase with the number of judges in a facility. However, better data and research are still needed to demonstrate empirically that this is the case.

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## Conclusions

Courtroom sharing in the federal judiciary has been a highly visible and much-debated issue in recent years across all three branches of government. Proponents of courtroom sharing argue that sharing is feasible because of low use levels and that taxpayer dollars could be saved by reducing the number of courtrooms needed. Opponents of courtroom sharing argue that the complexities associated with courtroom availability and effective judicial administration reduce the likelihood that sharing is feasible. We and certain other organizations have reported that more research is needed to develop data on the major factors that influence courtroom use and availability. Without these data and analyses, it will be difficult to reach consensus on if and to what extent courtroom sharing could be instituted. Furthermore, the judiciary, key stakeholders, and the organizations that have done research in this area have not reached any up-front agreement on what type of cost-effective research should be done.

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<sup>15</sup> EY’s study defines a large courthouse in two slightly different ways: The executive summary defines a large courthouse as having “more than ten district judges,” but chapter IV refers to them as having “ten or more active judges.” We used “more than ten district judges” for the purpose of our review.

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Although the EY study provided useful information on the various factors that may affect courtroom sharing, it was not the type of research needed to help resolve the courtroom-sharing issue. Also, the study's limitations raised questions about the sufficiency of the data and analyses presented to support its conclusions and recommendations regarding courtroom sharing. We recognize that expert judgment should be considered in determining the merits of courtroom sharing. However, it is clear to us that the courtroom-sharing issue is not going to be resolved without better data and analysis on actual courtroom use, including factors that may affect the need for a courtroom, such as trial length and whether a trial will actually take place. Also, the credibility of any further research could be enhanced if it recognized the views of all key stakeholders in developing the study's objectives, methodologies, and approaches for doing the work. Cost-effective research along the lines of what we and others have recommended has not been performed and is needed if the government is to make informed, sound decisions on courtroom use and sharing issues. Although AOC is reluctant to do this type of cost-effective research, we continue to believe it should be done. Given the judiciary's position, we believe that Congress, as a minimum, should have access to actual courtroom use data and analysis for locations where new courthouse projects are proposed so that the judiciary's justification for the number of courtrooms in these projects can be assessed before funding is approved.

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## Recommendations for Executive Action

We recommend that the Director, AOC, in conjunction with the Judicial Conference's Committee on Court Administration and Case Management and Committee on Security and Facilities, design and implement cost-effective research more in line with the recommendations in our 1997 report. These recommendations, which were similar to those made by Rand and FJC, were aimed at developing the type of data that would convincingly illustrate whether, and under what circumstances, opportunities for courtroom sharing exist. We also recommend that AOC establish an advisory group made up of interested stakeholders and experts to assist in identifying study objectives, potential methodologies, and reasonable approaches for doing this work.

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## Matter for Congressional Consideration

Given the controversy surrounding the courtroom-sharing issue, the potential savings that could be derived if fewer expensive trial courtrooms are built, and AOC's reluctance to design and implement cost-effective research to help resolve the issue, Congress should consider requiring AOC

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to provide persuasive courtroom use data and analysis, along with its views, to justify the number of courtrooms being requested in future courthouse construction projects before funding is approved.

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## EY and Judiciary Comments and Our Evaluation

We received written comments on a draft of this report from EY on November 9, 2000. (See app. II.) We received written comments from AOC's Associate Director on November 3, 2000. (See app. III.) We also received written comments on October 31, 2000, from the Chair of the Judicial Conference's Committee on Security and Facilities. (See app. IV.) OMB did not provide comments on the draft. An overall description of the comments and our evaluation are discussed below. In addition to our evaluation of AOC's major comments below, appendix III contains comments on other specific points AOC made. In October 2000, EY and AOC also provided us with oral technical comments on a draft of this report, which we incorporated where appropriate.

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## EY Comments

In its letter, EY provided general comments to add context to the work it did and clarify its overall objectives and scope. EY explained the design and objectives of its study and pointed out that the chapter on courtroom utilization was part of a broader, comprehensive review of courthouse planning. EY said that the chapter on courtroom utilization should not be read and/or used separately from the entire report. EY went on to say that empirical data and research on courtroom utilization were sparse and that the judiciary reported that data on courtroom utilization were generally unavailable. EY said that it considered various approaches that others had developed to attempt to study this issue empirically; but it became clear that such approaches would entail a data collection effort that was beyond the scope, time frame, and resource commitment of its engagement.

Given this, EY said that it used the empirical assessment of courtroom utilization in federal district courts that was available in our 1997 report, which provided a measure of courtroom utilization. EY said that it recognized that the assessment had limitations, but it attempted to build on it by examining what factors would influence the ability of district judges to share courtrooms, given the levels of utilization measured by GAO. EY said that the value of this type of analysis was that it showed that even in high levels of utilization, some courtroom sharing would be possible, although complex to implement. EY said that its view was that it would be possible for larger courthouses and senior judges to share courtrooms. However, it



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did not feel that its analysis was sufficient to recommend formally to the Judicial Conference that it change its national policy of providing one courtroom per active district judge.

In addition to general comments, EY had specific comments related to issues discussed in our report. For example, EY recognized that the 20 to 25 percent flexibility factor used in its mathematical formula to determine if five judges could share four courtrooms is not based on empirical data and analyses. EY said that on the basis of discussions with stakeholders and visits to courthouses, it identified factors that would require some degree of flexibility in its mathematical formula. EY said that the flexibility factor is a judgmental decision that cannot, at this time, be supported by empirical data. We share EY's view that some degree of flexibility may be needed to account for uncertainties that may affect the need for a courtroom, such as the trial length and whether trials will occur. However, a more reliable flexibility factor that would better reflect these uncertainties has not yet been developed. Therefore, we had concerns with EY's use of a subjective flexibility factor in its mathematical formula, given that the results of EY's analysis using the formula formed the basis for its conclusions and recommendations on the merits of courtroom sharing. As we stated in our report, had EY used a flexibility factor of 15 percent instead, the results would have suggested that five judges could have shared four courtrooms. We continue to believe that a persuasive assessment of the potential for sharing should be rooted in actual data on how often and for what purposes courtrooms are used. This could lead to a more analytically based assessment of the interrelationship of various events and a more defensible estimate of the flexibility needed to account for uncertainties.

In commenting on our assessment that the study provided no data, rationale, or analytical basis to support the flexibility factor, EY said that it listed multiple factors in the study that supported the need to take flexibility into account when considering courtroom sharing. EY explained that because these factors were derived from interviews with stakeholders, including judges, they constitute a rationale, particularly in the absence of empirical data. We agree that the factors EY listed generally constitute a rationale for why EY believed a flexibility factor was needed. However, our concern was that no rationale was provided for the specific flexibility factor—20 to 25 percent—that EY used in its formula. On the basis of EY's comment, we clarified this point in our report. We continue to believe that the EY report does not provide an adequate rationale for how EY determined that a flexibility factor of 20 to 25 percent should be used to account for the factors EY identified. Without such a rationale, there is no

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link between the basis for EY's judgment—stakeholder input and observations—and the specific percentages that EY decided to use.

In commenting on our conclusion that it incorrectly used data from our 1997 report on courtroom usage, EY acknowledged that it did not adequately describe our data in its assessment. However, EY continues to believe that its assessment of the potential for courtroom sharing is appropriate, in part, because the GAO data could not distinguish between factors that affect partial days and multiple days in the scheduling process. We do not see how distinguishing between factors that affect partial days and multiple days has any bearing on the interpretation of our data. As stated in this report, EY's courtroom utilization model used our 65 percent courtroom use measure as an actual lights-on courtroom use measure—the number of hours judges spent in the courtrooms—when in fact it was a percentage of workdays that the courtrooms were used for any activity, even if the activities lasted less than an hour. Using our courtroom use measure as a lights-on measure overstated the number of hours that judges spent in the courtrooms. Also, it does not recognize that on a significant number of the days, the courtrooms were used for only 2 hours or less.

Regarding our point that the Brooklyn courthouse may not be a good example to demonstrate courtroom-sharing feasibility, EY said that its assessment noted the limitations of using Brooklyn as a case study and that the limitations were disclosed. We recognized in our report that EY identified the limitations of using the Brooklyn case study in appendix B of its study. However, as indicated in our report, the body of EY's study does not mention these limitations and is definitive in saying that the Brooklyn courthouse demonstrated that sharing has been costly to administer in terms of staff time, disruptions, and ineffective administration of justice. As a result, readers of the chapter on courtroom sharing may mistakenly conclude that the problems in Brooklyn were due to courtroom sharing alone and not the presence of operational difficulties caused by inadequate facilities. In our October meeting with EY to discuss the draft report, EY staff said that on the basis of our concern, they would have considered modifying the body of their report to reflect the limitations with using Brooklyn to draw conclusions about sharing.

Finally, EY said that the chapter on courtroom utilization should not be read and/or used separately from its entire report because its analysis on courtroom utilization was part and parcel of a comprehensive review of courthouse planning. Although we were specifically requested to examine

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the courtroom utilization chapter, we did review it in the context of the other chapters in the report.

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## AOC Comments

In commenting on a draft of this report, AOC disagreed with our conclusion that the EY study did not provide the type of data or analyses needed to resolve the courtroom-sharing issue. AOC also disagreed with our recommendation to design and implement cost effective research to develop actual courtroom use data that we believe could more convincingly illustrate whether, and under what circumstances, opportunities for courtroom sharing exist. AOC said that the EY study was comprehensive; it believes that no further statistical study would be productive, expert judgment needs to be applied, and that it is highly unlikely that we would accept any result short of our previous conclusions. AOC also said that decisions on courtrooms should not be based on purely economic reasons, sharing beyond what the judiciary has agreed to would impair the effective and fair administration of justice, and those who think that the judiciary is unfit to determine its requirements might ask themselves why.

We do not believe that AOC's comments are persuasive and continue to believe that our conclusions and recommendations are appropriate and are fully supported by the evidence and analysis in our report. As discussed in this report, EY's assessment of the courtroom-sharing issue was not the type of research we and others—including Rand and FJC—have concluded would be needed to resolve the courtroom-sharing issue. The EY report itself essentially supports this assessment. EY's analysis of the courtroom-sharing issue was problematic, as we discussed in our report, and neither EY nor AOC provided any additional data or analysis that resolve the problems we identified.

We do not believe, as AOC indicated, that decisions on courtroom sharing should be made solely on the basis of empirical data, nor do we believe that (1) cost savings should override considerations related to the effective administration of justice, (2) courtroom-sharing decisions should be made without the application of expert judicial judgment, or (3) existing data support the need for active district judges to share courtrooms. Our position is that given the amount of time expensive trial courtrooms appear to go unused, more should be done to determine if sharing is feasible without impairing the judicial process. Also, it is our view that decisions on courtroom sharing should entail the application of expert judicial judgment to complement more empirical data on courtroom use than currently exists

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and should reflect more sophisticated methodological approaches than were included in EY's study. Contrary to AOC's view, we are not locked into a preconceived conclusion or specific methodological approach. We do believe, however, that the courtroom-sharing issue needs to be addressed through a more empirically based study than EY's, and, we note that EY itself characterized its study as "...exploring the context of courtroom sharing...."

Furthermore, although we agree with AOC that courtroom sharing should not be implemented if it impedes the effective administration of justice or infringes on constitutional rights, AOC provided no evidence or analyses to show that this would be the case. In addition, EY itself raised questions about drawing conclusions from the Brooklyn courthouse experience.

Finally, in neither this nor our prior reports have we questioned the judiciary's fitness to determine its requirements. At the same time, it is a normal part of the congressional appropriations and oversight process to review and question the basis for the stated resource requirements of any federal agency or department, including the judiciary. Currently, the judiciary has presented virtually no empirical data to support its position that it is essential for each active district judge to have a dedicated courtroom. We are not, as AOC suggests, proponents of courtroom sharing, but we are proponents of having persuasive data and analysis for making informed decisions about the use of public resources. It would be both appropriate and desirable for the judiciary to be directly involved with any independent research that we and others are recommending; decisions on courtroom sharing should not be made without full consideration of the judiciary's views. However, AOC remains reluctant to undertake the type of research we and others have said is necessary to make informed decisions about the number of courtrooms needed. Consequently, we believe Congress should consider requiring AOC to provide persuasive courtroom use data and analysis, along with its views, to justify the number of courtrooms requested for future courthouse construction projects before funding is approved.

In its November 3 letter, AOC raised seven specific concerns with our draft report. These concerns, and our evaluation, are discussed below as well as in the GAO Comments section that follows AOC's letter in appendix III.

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## Stakeholder Involvement in the EY Study

AOC's first major concern was that our report did not credit the judiciary's actions to involve stakeholders in the EY study. AOC states that the

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judiciary has taken the concerns raised by a few stakeholders about courtroom needs seriously and, among other things, undertook the study by EY in 1999. AOC said the EY study was comprehensive and inclusive and that the study had a requirement for the consultant to seek out and consider the views of all stakeholders. AOC said that the judiciary invited 39 officials in Congress and the executive branch to participate in the assessment and that EY interviewed many to consider their suggestions in framing its approach. AOC went on to say that GAO wrongly faults the judiciary with failing to obtain stakeholder agreement on the study objectives and approaches.

AOC is correct that our draft did not recognize AOC's and EY's efforts to contact various stakeholders in doing its overall study on the judiciary's space and facilities program, and we modified our report to recognize these efforts. However, our point that agreement has not been reached with stakeholders on the type of study that should be done to help resolve the courtroom-sharing issue remains valid, as evidenced by our discussions with AOC, OMB, congressional staff, and one of the authors of the Rand study. Further, when EY staff met with us at the beginning of the study, we gave them an overview of our prior work and the recommendations we made related to the type of research that we believe is still worth pursuing. However, the EY staff who interviewed us did not ask us to comment on a specific, proposed approach or methodology for its study. Thus, we were not given the opportunity to comment on EY's planned approach prior to its implementation.

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## Portrayal of Stakeholder Views

AOC's second major point was that our draft report did not accurately portray the views of stakeholders. AOC stated that the draft suggested that there is a courtroom debate with two distinct sides—with the judiciary on one side and most other stakeholders outside the judiciary on the other side. AOC went on to say that those directly involved in the justice system have voiced concerns similar to those of the judiciary. AOC provided examples of others, such as a number of U.S. Attorneys and the President of the Federal Bar Association, who are concerned about the merits of courtroom sharing. AOC said that to suggest that the judiciary stands nearly alone in its views about courtrooms is simply not accurate. AOC's point is valid. It was not our intent to portray the judiciary as the only opponent of courtroom sharing, and we modified the text to reflect the fact that other stakeholders besides the judiciary have concerns about sharing. On the other hand, AOC also said that a few individuals who are involved with funding have expressed a view on sharing different from the

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judiciary's view. We believe that AOC's characterization understates the concerns that have been expressed. As AOC later acknowledges, OMB proposed courtroom sharing in projects included in the President's budget request. The Senate report that mandated our work dedicates a section to the courtroom-sharing issue that states that AOC "fails to pursue a policy of fiscal restraint" and indicates that the Appropriations Committee "will continue to pursue all avenues with respect to cost containment." The House Subcommittee on Economic Development, Public Buildings, Hazardous Materials, and Pipeline Safety has also raised questions on the sharing issue. In addition, CBO has explored the courtroom-sharing issue.

Finally, AOC cited comments made by those opposed to courtroom sharing that discussed the negative effects they believe sharing would have on the administration of justice. These concerns are important and need to be explored, but AOC provided no additional evidence on the validity of these concerns or that would address the courtroom use results discussed in our 1997 reports on courtroom utilization.

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### Recognition of Judiciary Actions to Share Courtrooms and Potential for Additional Savings

AOC's third area of major concern was that our report gives insufficient recognition to the fact that the judiciary's actions have already reduced the number of courtrooms planned in new facilities and that it oversimplifies the potential for additional savings. AOC pointed out that the EY study reported that some sharing already occurs in the judiciary. It also stated that for future projects, 274 courtrooms are planned for 347 judges. AOC said that this important information is not mentioned until near the end of our report. AOC also stated that the idea that further reductions in courtrooms will result in savings is not as simple as we suggested in our report. AOC said that according to the EY study, if courthouses are not built to accommodate a court's operational needs and future growth requirements, substantial future expenditures could be incurred sooner. AOC said that if even one annex or new courthouse is required a few years hence because an insufficient number of courtrooms were provided in a courthouse project, millions of additional dollars would have to be spent. Therefore, AOC said that to avoid added costs, it is as important not to underbuild the number of courtrooms in a new or expanded courthouse as it is not to overbuild. According to AOC, courtrooms are built to be used for at least 50 years, but the number of courtrooms built in a new facility is based on only a 10-year projection of need. According to AOC, with the growing workloads in the courts, short-term savings can readily be overshadowed by additional costs to expand facilities later.

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In raising these concerns, it is important to note that the sharing AOC refers to, including the sharing reflected in almost all future projects, is for visiting judges and senior judges who carry reduced caseloads, not active district judges. Only one location among the future projects—Seattle—plans sharing among active district judges. According to the AOC official who oversaw the EY study, it is not yet clear whether sharing will ever actually occur in Seattle. To reflect AOC's concern, we modified our report to recognize the judiciary's actions on sharing earlier in our report. That is, the judiciary has decided that some sharing is feasible. However, the issue of whether active district judges can share courtrooms was the central issue addressed by EY's analysis and its resulting conclusion and recommendation that the judiciary retain the one-judge, one-courtroom policy. AOC and EY officials told us during our review that Brooklyn was the only location where active district judges were currently sharing. As mentioned earlier, EY acknowledged that various limitations made it difficult to determine if the problems in Brooklyn were due to sharing.

Regarding potential savings, AOC did not provide evidence to support its assertion that building fewer courtrooms in a project will accelerate the need for future expansion. The EY quote that AOC uses to make this point states that additional expenditures could be incurred sooner if courthouses are not built to accommodate future growth requirements. We did not say in this report that courthouses should not be built to accommodate future growth. Instead, our work has shown that the number of courtrooms that may be needed to accommodate growth efficiently while maintaining effective judicial administration may be less than the number that are currently being constructed. Our assessment was based on the low levels of courtroom use we observed and documented in our prior work. Furthermore, in our 1997 report, we noted that of the six locations with more than one trial courtroom, all courtrooms at any location were seldom used for trials and nontrial activities the same day. For example, of the 250 workdays in 1995, Miami and Washington each had at least one unused courtroom on each of the workdays. We believe that judgments about how many courtrooms are needed to efficiently accommodate the judiciary's needs without compromising effective judicial administration would be better supported by sound methodological analyses of empirical data on how often and for what purposes courtrooms are actually used.

It is also important to point out that the EY economic analysis AOC mentioned was inconclusive. The analysis suggested that any potential savings from constructing fewer courtrooms could be offset by the costs of hiring schedulers to enable courtroom sharing to take place. To be

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conclusive, such an analysis would need to consider exactly how many fewer courtrooms could be built, and how many—if any—new personnel would have to be hired as schedulers. These are empirical questions that could be addressed in the type of cost-effective research we and others have recommended needs to be done to help resolve the courtroom-sharing issue.

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## Focus on GAO's 1997 Report

AOC's fourth major concern was that the report's organization and presentation pay attention to promoting GAO's earlier conclusions rather than to presenting a thorough consideration of EY's approach to the subject. AOC states that from the start, our report focuses on restating our conclusions and recommendations from our 1997 report instead of on the current assignment to review the EY study. AOC said that nearly half of the draft report's text has little or nothing to do with the EY study. AOC said that it had previously documented serious reservations about the accuracy of our earlier assessment and the validity of conclusions that are repeated in this report.

We believe that AOC's concern about the organization of our report is not valid. Given the complexity of this issue, we would be remiss if we did not include a discussion of what we and other researchers—including Rand and FJC—have reported in this area. In meeting our objective to determine whether the EY study provided sufficient data and analysis to show if, and to what extent, courtroom sharing may be feasible, we used the results of our prior work and the research of others as criteria for evaluating the EY study. This is a common and widely accepted practice in social science research. In addition, because EY relied heavily on data from our 1997 report for its analysis, we believed that readers of this report needed information on our earlier study to fully understand EY's use of our data and our assessment of EY's study. Nonetheless, on the basis of AOC's concern, we added an explanation of why we used our past work and that of others in the detailed discussion of our objective, scope, and methodology contained in appendix I. It is also important to point out that in its comments on our 1997 report, although AOC disagreed with our conclusions and recommendations, it did not take issue with the accuracy of our data on courtroom use, as was implied in its comments related to this report.



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## Empirical Data Versus Expert Judgment

AOC's fifth major concern was that our report overstates the likelihood that more data will resolve the courtroom-sharing issue. AOC said that our report reflects scant respect for expert judgment, dismisses the professional judgment applied by EY, and shows a high degree of skepticism about the value of the opinions of judges and other primary users and schedulers of courtrooms. AOC went on to say that there are many questions for which data will not provide answers and that the EY study describes many factors relevant to the courtroom issue that are highly variable, unpredictable, or cannot be measured empirically.

AOC's explanation of this concern inaccurately portrays our view of the role that methodologically sound analysis of empirical data can play in helping to resolve the courtroom-sharing issue and contains several assertions that it has not provided sufficient evidence to support. Two important facts in this debate are that available data show that courtroom use levels appear low, and trial courtrooms are expensive to build. To date, there has been much debate by experts on both sides of the issue. However, this debate—which reflects the expert judgment that AOC mentions—has resulted in an impasse regarding whether sharing is feasible. Our view is that more empirical research could be done to further the debate and provide empirical support for either side's argument. We do not, as AOC asserted, believe that this research will provide all the answers or that there is no place for expert judgment. We modified our report to make these points clearer.

We have a number of other points that raise questions about the validity of AOC's fifth major concern. AOC mentions factors that are difficult to measure and are highly variable and implies that these issues cannot be studied empirically. It is our view that this has not been conclusively determined. In fact, our interviews with EY staff and review of AOC documents show that EY proposed a study of courtroom sharing similar to what Rand proposed. A Rand-type study would attempt to study these factors empirically. This proposal was rejected because the additional cost and time frame involved went beyond the scope of EY's broader study of the judiciary's space and facilities program, not because it was definitively determined that these factors could not be studied empirically. We also disagree with AOC's statement that most of the analysis we have recommended would be theoretical, not empirical. Although a methodologically sound analysis of this issue—such as modeling or the computer simulations that Rand suggests—would involve making assumptions, it would be based on data on how courtrooms are actually

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used and thus would be considered an empirical assessment according to standard practice in social science research.

Further, although AOC believes it is impossible to find a scientific way to measure what does not happen, we believe that social science research has been developed to do just that. In fact, the approach we discuss in our report is not dissimilar to the one that AOC uses in its long-range planning model for predicting its space needs. AOC forecasts its future workload using the available data on past workload and statistical models that are based on standard theories and assumptions. Essentially, AOC uses scientific methods to measure what has not happened. In another example, the Bureau of Prisons (BOP) routinely uses computer simulations to estimate the effects of potential changes in sentencing legislation on the size of the federal prison population. The results of these simulations are used to project the financial impact of potential legislative changes. According to BOP, the results of these simulations are also used in deliberations by Congress and other bodies, such as the U.S. Sentencing Commission and the Department of Justice.

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## Value Added by Additional Study

AOC's sixth major concern was that our report uses confusing figures to support the idea that another extensive study is worth pursuing. AOC said that there is no compelling justification provided in our report to explain why another study of the subject would be cost effective. AOC said that we acknowledged the study would be lengthy and costly and referred to data that it believes show that the potential for sharing is small given the size of most courthouses. We disagree with AOC's contention that some of our figures are confusing. Our point was to show that although 91 percent of courthouses have five or fewer active district judges, the remaining 9 percent of these courthouses contain 40 percent of all active district judges. Therefore, close to one-half of active district judges are located in courthouses where EY concluded that sharing is likely to be more feasible. Furthermore, although we agree that sharing in smaller courthouses would pose more of a challenge, our work showed that the mathematical analysis EY used to examine the potential for courtroom sharing in smaller courthouses was problematic. As a result, we disagree with AOC's premise that it has been definitively determined that sharing at smaller courthouses is not possible.

Regarding the cost-effectiveness of future research, we disagree with AOC's view that our report does not contain a compelling justification. As stated in our report, available data suggest that courtrooms are not used

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very often, the need for new judgeships will continue to grow, and significant amounts of taxpayer dollars are being spent to replace obsolete facilities and accommodate growth. Cumulatively, these factors form a basis to suggest that further research would be worth pursuing because significant savings could result if fewer million-dollar trial courtrooms need to be constructed. In our 1997 report on courtroom use, we said that AOC workload projections indicated that the number of district judgeships could double or perhaps increase more significantly by the year 2020—from 647 judgeships in 1996 to between 1,280 and 2,410 judgeships over this period. Although AOC officials said that these previous projections were no longer valid, they acknowledged that workloads would continue to increase. AOC told us that for budgeting purposes, it was planning for an 8-percent increase in judgeships by 2006. Although the timing and rate of increase in new judgeships remain unclear, it is apparent that the judiciary is planning to accommodate growth and replace obsolete facilities in the future, as evidenced by its multibillion-dollar courthouse construction initiative.

Related to the cost-effectiveness of further research, AOC also incorrectly stated that we acknowledged in our report that such a study would be costly. We recognized that data collection for the effort would be time-consuming because of the lack of data on courtroom use, but we did not conclude that such an effort would be too costly to consider. In fact, the cost of such a study is unknown because the objectives, scope, and methodology have not been determined. And, whether such a study would be considered costly would have to be determined within the context of the potential savings that may be achieved by building fewer expensive trial courtrooms. It is our view that AOC's reasoning that such research is too costly is not supported by facts and analysis and that at least some of the data we believe are important could possibly be gathered without incurring any or significant additional costs. For example, the judiciary could ask court personnel to track courtroom use on a real-time basis for a period of time. Such an approach would not require a special, separate study in which researchers would have to examine records or interview personnel to obtain historical data.

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## Criteria for Effective Courtroom Use

AOC's seventh major concern had to do with part of a recommendation made in our 1997 report to establish criteria for determining effective courtroom use. AOC said that our proposal to establish courtroom use criteria is alarming. AOC said that if efficiency was valued more in our society than fairness, fewer courtrooms could be built. AOC went on to say

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that focusing on use and cost of courtrooms may overlook more fundamental values and indicated that it is neither possible nor feasible to establish a standard for courtroom use.

AOC's basis for this concern appears to be its assumption that delays and other problems would occur if courtroom usage criteria were adopted. However, AOC did not provide any convincing evidence to support its view. We are not suggesting, as AOC pointed out, that the judicial system should operate under factory-like standards. In fact, we stated in this report that efficiency and cost savings should not override considerations related to the administration of justice. However, we do not find it unreasonable for the judiciary to develop and analyze actual courtroom use data so that informed decisions could be made on whether courtroom sharing is feasible. As part of collecting and analyzing courtroom use data, it is important that criteria be developed to determine what constitutes efficient and effective courtroom use so that judiciary officials can consistently interpret usage levels and apply an agreed-upon standard to identify the number of courtrooms needed to conduct efficient operations without compromising effective judicial administration. Establishment of criteria would not preclude the use of expert judgment which could be applied to empirical data and sound analyses to draw conclusions and determine appropriate actions.

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## Comments by the Chair, Judicial Conference Committee on Security and Facilities

The Honorable Jane R. Roth, Chair of the Committee on Security and Facilities of the Judicial Conference of the United States, also provided comments on a draft of the report. Ms. Roth said that in her capacity as the Chair of the Committee on Security and Facilities, she was familiar with the methodologies EY used to analyze the subject of courtroom sharing and was satisfied that the consultant's approach was sound. She went on to say that in her view, the recommendations made by EY regarding the courtroom needs of active district judges were reasonable. She said that given the complexities of the subject of courtroom sharing, she does not agree that a matter of such importance to the administration of justice can be answered by the collection and manipulation of data. She said that there are too many unmeasurable ingredients to achieve the clarity of results or the uniform answer that is sought by GAO. She said that she concurred with the comments provided by AOC on our draft report.

We agree that the issue of courtroom sharing cannot be resolved only through the collection and manipulation of data. However, we strongly believe that the development of actual courtroom data is a critical starting

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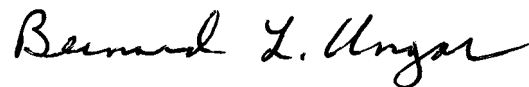
point to fully understanding the issue. That is, knowing how often and for what purposes courtrooms are actually used and how the various events interrelate would form the basis for further research on the potential for courtroom sharing and the application of expert judgment. In our view, it seems reasonable for decisionmakers to want information on actual courtroom use, especially given the high cost to construct trial courtrooms. In fact, in our 1997 report, we pointed out that FJC believed that “it seems likely the judicial branch can expect the current pressure for economy, efficiency, and effectiveness to continue and quite probably to intensify” and that “expenditures for features beyond the most Spartan will have to be defended with hard data.” Furthermore, FJC proposed major changes to the judiciary’s regular data collection “so that the elements, dynamics, and effects of court operations can be substantively reported without assembling an ad hoc study each time a specific aspect of the system is questioned and singled out for scrutiny.” Without better data, it is difficult to make informed decisions about the feasibility of courtroom sharing. Given this, the debate over courtroom sharing will continue to be based on speculation and qualitative judgment that is not based on the methodologically sound analysis of empirical evidence.

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We are sending copies of this report to the Chairmen and Ranking Minority Members of congressional committees with jurisdiction over the judiciary and GSA. We are also sending copies of this report to the Honorable Jane R. Roth, Chair of the Judicial Conference’s Committee on Security and Facilities; the Honorable John W. Lungstrum, Chair of the Judicial Conference’s Committee on Court Administration and Case Management; the Honorable L. Ralph Mechem, Director, AOC; the Honorable Jacob J. Lew, Director, OMB; and the Honorable David J. Barram, Administrator, GSA. We will also send copies to interested congressional committees and make copies available to others on request.

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Major contributors to this report were James G. Cooksey, Martin H. de Alteriis, David E. Sausville, and Gerald Stankosky. If you or your staff have any questions, please contact me on (202) 512-8387 or at [ungarb.ggd@gao.gov](mailto:ungarb.ggd@gao.gov).

A handwritten signature in black ink, reading "Bernard L. Ungar". The signature is written in a cursive style with a large, stylized 'B' and 'U'.

Bernard L. Ungar  
Director, Physical Infrastructure

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# Objective, Scope, and Methodology

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Our objective was to determine whether the Ernst & Young (EY) study provided sufficient data and analyses to show if, and to what extent, courtroom sharing may be feasible. To meet this objective, we obtained and analyzed the EY study, with a focus on the parts of the study that pertained to courtroom use and sharing, including the executive summary; chapter IV, “Assessing the Need for Courtrooms”; appendix A, “Study Approach and Methodology”; and appendix B, “Brooklyn Courthouse Case Study.” We assessed EY’s interpretation and use of data from our 1997 report and examined and tested the mathematical formula EY developed and applied to determine whether courtroom sharing was feasible. We used our 1997 report and research done by other organizations as criteria to evaluate the EY study. In focusing on the parts of the study that pertained to courtroom use and sharing, we reviewed those elements that were directly related to supporting the study’s conclusions and recommendations on courtroom use and sharing. These included the mathematical formula EY used to examine the potential for sharing, the Brooklyn courthouse example, and the qualitative arguments that EY developed to support its positions.

In order to test the EY formula used to illustrate courtroom sharing opportunities, we adjusted data from our 1997 report to reflect a measure that more closely resembled lights-on use—that is, the number of hours judges spent in the courtrooms. We used this measure in EY’s formula to determine how it would have affected EY’s results. In our 1997 report, we had credited courtrooms with a full day of use when there was any trial or nontrial activity, even if it lasted less than an hour. To adjust our data to more of a lights-on measure, we were able to remove some of the hours for which we were certain that no activity had occurred. Specifically, when there were 2 hours or less of nontrial activity, we credited the courtroom with 2 hours of use instead of a full day’s use as was done for our 1997 report. We made this adjustment relying completely on the data available in our 1997 report and on the basis of an 8-hour day. This adjustment creates more of a lights-on measure, but it still is conservative because it continues to contain time with no use because we credited the courtrooms with a full 2 hours of use even though less than 2 hours of use could have occurred. Also, we made no adjustment to the days when there was nontrial time that lasted more than two hours but may not have lasted the whole day. In addition, we made no adjustment for days when trials took place because our data source did not always allow us to determine the actual number of hours trials were held each day.

We reviewed the qualitative information presented in the study, including information on issues related to the potential for courtroom sharing and



the Brooklyn, NY, courthouse case study. We examined EY's conclusions and recommendations in relation to the data and analysis presented. We interviewed officials from the Administrative Office of the U.S. Courts (AOC), Office of Management and Budget, and Congressional Budget Office to obtain their views on the EY study and courtroom-sharing issues. We also interviewed the EY staff who worked on the study and one of the authors of a 1996 Rand Institute for Civil Justice (Rand) study on courtroom use.<sup>1</sup> We reviewed previous studies on or related to courtroom use by us, AOC, Rand, and the Federal Judicial Center (FJC) to determine if the EY study represented the type of research and analysis that we and others have recommended. We also examined AOC's contract file for this study. We did our work between June 2000 and September 2000 in accordance with generally accepted government auditing standards. We received written comments on a draft of this report from EY, AOC, and the Chair of the Judicial Conference's Committee on Security and Facilities. An overall description of these comments and our evaluation are discussed near the end of the letter. Appendix III also contains comments on other specific points made by AOC.

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<sup>1</sup> Terence Dunworth and James S. Kakalik, *Research on Courtroom Sharing, Project Memorandum*, Rand Institute for Civil Justice, PM-598—1-ICJ, September 1996.

# Comments From Ernst & Young



Ernst & Young LLP  
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November 9, 2000

Mr. Bernard L. Ungar  
Director  
Physical Infrastructure  
United States General Accounting Office  
Washington, DC 20548

Dear Mr. Ungar:

## Comments on GAO Draft Report (GAO-01-07)

Thank you for providing Ernst & Young LLP ("E&Y") with the opportunity to comment on your report entitled *COURTHOUSE CONSTRUCTION: Consultant's Study Lacks Sufficient Data and Analysis To Resolve the Courtroom Sharing Issue* (GAO-01-07), which was distributed to us in draft on November 2, 2000. As stated in your draft report, we understand that your "objective was to determine whether the EY study provided sufficient data and analysis to show if, and to what extent, courtroom sharing may be feasible."<sup>1</sup>

Our report was designed to provide a comprehensive review of the judiciary's space and facilities program. That review covered the judiciary's long-range facilities planning methodology and process, the standards used in the *U.S. Courts Design Guide* and the application of those standards, as well as the processes, roles and responsibilities for designing, constructing, managing, and funding courthouses. One of the objectives of our study was to assist the judiciary in identifying opportunities for reducing the cost of courthouse construction without significantly impairing the judiciary's mission, which is the administration of justice.

In conducting our review of the judiciary's long-range facilities planning methodology, we were asked to consider the planning assumptions that the judiciary uses in assessing and projecting its future space requirements. The ratio of courtrooms to judges is one of those planning assumptions. This planning assumption derives from the prevailing policy of the Judicial Conference of the United States to provide one courtroom for every active district judge and one courtroom for every senior judge for a period of ten years after taking senior status. Although our analysis of courtroom utilization was part and parcel of our comprehensive review of courthouse planning, the results of our review of courtroom utilization were reported as a separate chapter. This chapter should not be read and/or used separate from our entire report.

In the course of our engagement, we discovered that the empirical data and research on courtroom utilization and sharing was sparse. We also were informed by the Administrative Office of the U.S. Courts ("AO") that district judges shared courtrooms in only one location. In addition, the AO reported that data on courtroom utilization was generally unavailable. We

<sup>1</sup> GAO Report, "Courthouse Construction: Consultant's Study Lacks Sufficient Data and Analysis to Resolve the Courtroom Sharing Issue", draft, circulated on November 2, 2000, p. 6.

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See pp. 22-23.

Now on pp. 6-7.



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considered the various approaches that others had developed to attempt to study this issue empirically. It became clear that such approaches would entail a data collection effort that was far beyond the scope, time frame and resource commitment of our engagement. That effort would have to cover the full range of districts and sub-districts to analyze for the effect of differences in operating practices at the local district court level on the case management and courtroom utilization process. It also would require computer simulation to model the possible impact of courtroom sharing on the administration of justice. These observations were discussed with the AO and it was decided that we would pursue a more conceptual approach based upon discussing the issue with judiciary personnel, including district judges, and relying upon the data that was immediately available.

The one empirical analysis of courtroom utilization in federal district courts that was available to us was the study discussed in GAO's 1997 report, which provided a measure of courtroom utilization. In discussing GAO's 1997 report with the judiciary and others, we heard some observers raise issue with the limited scope of GAO's measurement of courtroom utilization, in particular, that it understated certain kinds of courtroom use and that one needed to allow for greater flexibility if judges were to share courtrooms. Other comments related to the impact of geographic differences in how the legal profession operates and local district court policies. In addition, GAO, in your 1997 report, acknowledged certain limitations of the analysis.

Our analysis attempted to build on the 1997 study by examining what factors would influence the ability of district judges to share courtrooms, given the levels of utilization measured by GAO. The value of this type of analysis was in showing that even at high levels of utilization, some courtroom sharing would be possible although complex to implement. In particular, we believe it would be possible for larger courthouses and for senior judges. However, we did not feel that this analysis was sufficient to recommend formally to the Judicial Conference a change in its national policy of providing one courtroom per active district judge.<sup>2</sup>

The following comments relate to specific statements in your draft November 2, 2000 report.

GAO states that "The [EY] analysis...used a questionable flexibility factor to account for various uncertainties that may affect a courtroom scheduling process..."<sup>3</sup> GAO's draft report also states that the "courtroom use measure" included in GAO's 1997 report "contained a degree of flexibility."<sup>4</sup> As discussed in our report,<sup>5</sup> we relied on the stakeholders and our observations from visits to federal courthouses. This approach identified many factors that would require some degree of flexibility in the courtroom utilization model. These factors vary from items that could allow scheduling changes on an hourly basis, to items that may require multiple days to

<sup>2</sup> E&Y Report, "Independent Assessment of the Judiciary's Space and Facilities Program," pp. I-7 and IV-2.

<sup>3</sup> GAO Report, November 2, 2000 draft, p. 8.

<sup>4</sup> GAO Report, November 2, 2000 draft, p. 8.

<sup>5</sup> E&Y Report, pp. A-12 to A-13.

See pp. 23-24.

Now on p. 8.

Now on p. 8.



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change courtroom schedules. Accordingly, we believe the flexibility factor is a judgmental decision and cannot, at this time, be supported by empirical data. Based on our understanding of the issues, we believe that some flexibility factor is appropriate.

See p. 24.

GAO states that the EY analysis "...incorrectly used courtroom usage data from our [GAO's] 1997 report."<sup>6</sup> After discussing this issue with knowledgeable GAO staff, it came to our attention that the courtroom usage data in GAO's 1997 report were not described adequately in our assessment. Based on our current understanding of the GAO data from 1997, our assessment is still appropriate, in part, since GAO data cannot distinguish between factors that impact partial days and factors that impact multiple days in the scheduling process.

See pp. 23-24.

GAO states that the EY study "provided no data, rationale, or analytical basis to support the 20 to 25 percent flexibility factor other than to say it was appropriate."<sup>7</sup> E&Y did list multiple factors that we stated supported the need to take flexibility into account when considering courtroom sharing. These factors were derived from our interviews with stakeholders, including judges. As such, they do constitute a rationale, particularly in the absence of empirical data.<sup>8</sup>

See p. 24.

GAO states that "the Brooklyn courthouse may not be a good example to demonstrate courtroom sharing feasibility."<sup>9</sup> Our report, in Appendix B, notes the limitations of using Brooklyn as a case study, viz., "It is difficult to determine...the extent to which operational difficulties are caused by courtroom sharing or by inadequate facilities."<sup>10</sup> As GAO stated in its draft report, the Brooklyn courthouse was reported as the only federal courthouse where active district judges were sharing courtrooms.<sup>11</sup> We used this case study to help us to identify the impact that courtroom sharing may have on the administration of justice. As stated, the limitations of using the Brooklyn courthouse for this purpose were disclosed in our report.

Again, thank you for offering the opportunity for us to provide you with these comments.

Sincerely,

cc: Ms. C. McCarthy

Now on p. 8.

Now on p. 8.

Now on pp. 19-20.

Now on pp. 19-20.

<sup>6</sup> GAO Report, November 2, 2000 draft, p. 8.

<sup>7</sup> GAO Report, November 2, 2000 draft, p. 8

<sup>8</sup> E&Y Report, pp. IV-12 to IV-17.

<sup>9</sup> GAO Report, November 2, 2000 draft, p. 24.

<sup>10</sup> E&Y Report, Appendix B, p. B-1.

<sup>11</sup> GAO Report, November 2, 2000 draft, p. 24.

# Comments From the Administrative Office of the U.S. Courts

Note: GAO's comments supplementing those in the report text appear at the end of this appendix.



LEONIDAS RALPH MECHAM  
Director

## ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

November 3, 2000

Mr. Bernard L. Ungar  
Director, Physical Infrastructure  
General Accounting Office  
Washington, D.C. 20548

Dear Mr. Ungar:

We appreciate the opportunity to comment on the draft report entitled *Courthouse Construction: Consultant's Study Lacks Sufficient Data and Analysis to Resolve the Courtroom Sharing Issue*. We have several serious concerns about the report.

**1. The report does not credit the judiciary's actions to involve stakeholders in the Ernst & Young study.**

There are a few stakeholders who have raised questions about courtroom needs, as described by the General Accounting Office (GAO). The judiciary has taken these concerns seriously, and it is because of these interests that the judiciary adopted a new courtroom-planning policy in 1997 and undertook the study by Ernst & Young in 1999. This study was comprehensive and inclusive.

An important study requirement was that the consultant must seek out and consider the views of all stakeholders. GAO wrongly faults the judiciary (on page 18) with failing to obtain stakeholder agreement on the study objectives and approaches. In fact, thirty-nine officials in Congress and the executive branch were invited by the judiciary to participate in the assessment.<sup>1</sup> Many of them were interviewed by the consultants, and these interviews occurred at the start of the effort in order for the consultants to consider others' suggestions in framing their approach. All of the stakeholders GAO references (GAO, congressional subcommittees and the Office of

<sup>1</sup> A list is published in the final report, along with a sample of the letter that was sent by the Director of the Administrative Office of the U.S. Courts to the stakeholders mentioned by GAO.

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

See pp. 26-27.

Now on p. 15.

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Management and Budget, among others) who might have had an interest in contributing ideas to the study had an ample opportunity to do so.

**2. The report does not accurately portray the views of stakeholders.**

From the start, the report suggests there is a courtroom debate with two distinct sides—with the judiciary on one side and most other stakeholders outside the judiciary on the other side. This is a false picture because key stakeholders have expressed different views. Generally, those directly involved in the justice system have voiced similar concerns and a few individuals who are involved with funding have expressed a different view. To suggest that the judiciary stands nearly alone in its views about courtrooms is simply not accurate.

A courtroom-reduction proposal this year by the Office of Management and Budget was not adopted by Congress. In fact, Congress funded eight courthouse projects without imposing courtroom sharing. Not only did at least 16 members of Congress testify or submit letters in support of full funding on behalf of courthouse projects planned under the judiciary's current courtroom-planning policies, but all four congressional authorizing and appropriating subcommittees supported courthouses planned under the existing policies. During a hearing, a respected Senate subcommittee member described the courtroom-sharing experience in the district court in Brooklyn, New York as "a disaster." The House Appropriations report objected to "OMB's unilateral *one size fits all* plan..." and expressed concern about "the impact that the reductions in courtrooms would have on the administration of justice...."

Outside the judiciary, those with the largest stake and greatest understanding of the use of courtrooms are the litigants. The attorneys who practice in the federal courts have voiced grave concerns about possible courtroom reductions. Notably, United States Attorneys and the Federal Bar Association, which represents 15,000 members involved with the federal courts, have both described the potential harm to the criminal and civil justice system if courtrooms were reduced.

After informally polling 15-20 United States Attorneys, the Deputy Director of the Executive Office of United States Attorneys wrote in 1996:

Almost every trial involves the orchestration of a large number of people—at a minimum 50—including a considerable jury pool, various court personnel, witnesses, victims, and attorneys. Under the present system, the logistics are very demanding. If shared space had to be scheduled, chaos

See pp. 27-28.

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very likely could ensue. One result could be that when priority matters arise, active trials would have to be continued or relocated elsewhere due to space limitations. Jurors and witnesses, who are generally unfamiliar with the court system, could be seriously inconvenienced, and litigants could face substantial additional legal costs. This would almost certainly discourage willing jury service. Further, if courtroom space were reduced, the legal requirement to give criminal cases priority could mean substantially aggravated delays in civil cases, which in many districts already face a substantial backlog, thereby causing severe hardship to thousands of civil litigants each year, both individuals and businesses.

Any delays in criminal cases would cause even more difficulties. In addition to being a problem under the Speedy Trial Act, innocent defendants could find themselves held longer in pretrial detention, and potential criminals could be left on the streets to continue to prey on the innocent. Victims might suffer protracted anguish the longer trials are delayed. As it stands right now, many victim advocate groups urge passage of a constitutional amendment to guarantee victims the right to disposition of their cases without delays.

This year, a United States Attorney wrote to a United States Senator concerning the possibility of an imposed courtroom-sharing policy for a courthouse to be constructed in his district. He described important practical implications for case processing and concerns about the following: 1) the impact on complying with criminal speedy trial requirements that might necessitate the dismissal of indictments; 2) the implications for defendant custody, including possible increases in the release of dangerous defendants who may flee or endanger victims or witnesses; 3) the potential loss of cooperation from witnesses due to delays, as well as the loss of law enforcement witnesses' time that might be spent on other law enforcement duties. In closing, he concluded that "requiring judges to share a courtroom would significantly limit our ability to serve the public."

In addition, the President of the Federal Bar Association wrote to congressional leaders to convey the Association's concern about courtroom sharing and published the following statement of the Federal Bar Association's views (*The Federal Lawyer*, July 2000):

Courtroom sharing will significantly impair the ability of judges to do their jobs effectively, and will result in significant scheduling problems with an impact on litigants, attorneys, witnesses and jurors. Courtroom sharing

Mr. Bernard L. Ungar

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also will increase delays and costs not only for the courts, but also for litigants.

Courtrooms are essential tools in the delivery of justice. Their availability assures the timely adjudication of cases and the elimination of last minute delays. Cancellation of even one civil jury trial due to the lack of a courtroom can result in many thousands of dollars in legal fees and expert witness costs for the litigants, not to mention the public's loss of confidence in the judicial system the *one time* they will experience it. To delete courtrooms from buildings that last for decades will only cause the judiciary to return to Congress shortly after a building is occupied in order to seek funding for expansion or major alteration to a brand new facility.

GAO is also aware of a study of state court systems that showed that none of the 50 states had a policy that differed from the federal judiciary's courtroom policy for trial court judges.

The views expressed by these stakeholders and experts mirror the concerns GAO's draft report attributes to the federal judiciary. Moreover, Ernst & Young's analysis supports these points. To suggest that the judiciary alone is concerned about the imposition of a policy requiring courtroom sharing is incorrect. It would be more accurate to draw a distinction between the views of experts involved in the judicial system, and individuals with little substantive knowledge of judicial administration who may place a low priority on the judiciary's facilities needs because they wish to direct limited funds elsewhere.

3. **The report gives insufficient recognition to the fact that the judiciary's actions have already reduced the number of courtrooms planned in new facilities, and it over-simplifies the potential for additional savings.**

As reported in Ernst & Young's study, some courtroom sharing already occurs in the courts. Also, for future courthouse projects, 274 courtrooms are planned for 347 judges--representing a ratio of four courtrooms planned for every five judges. This important information is not mentioned by GAO until page 18. The judiciary has demonstrated its willingness to examine carefully the projected courtroom needs in new facilities and to plan for the sharing of courtrooms in those situations where it is deemed feasible.

See pp. 28-30.



Mr. Bernard L. Ungar

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The idea that further reductions in courtrooms will save taxpayer dollars is not as simple as GAO suggests. The Ernst & Young report makes the following important point:

If courthouses are not built to accommodate a court's operational needs and future growth requirements, substantial future expenditures could be incurred sooner. If even one annex or new courthouse is required a few years hence because an insufficient number of courtrooms was provided in a courthouse project, then millions of additional dollars will have to be spent. Therefore to avoid added costs, it is as important not to underbuild the number of courtrooms in a new or expanded courthouse as it is not to overbuild.

Courtrooms are built to be used for at least 50 years, but the number of courtrooms built in a new facility is only based on a ten-year projection of need. With growing workloads in the courts, short term savings can readily be overshadowed by additional costs to expand facilities later.

Ernst & Young also completed an economic analysis that considered the average cost to construct and maintain a courtroom, amortized over a 30-year period. This economic analysis of the potential savings and costs (including risks to the judicial system), led them to conclude that there was no compelling economic reason to recommend a change in the courtroom policy for active district judges. However, they suggested that "the judiciary should continue to encourage individual courts to consider whether they can operate with fewer courtrooms, just as they should consider other design options that may save money and still meet their needs. Given its importance, this is a decision that we believe should be made based on local needs and not on a national policy...."

4. **The report's organization and presentation pay primary attention to promoting GAO's earlier conclusions rather than to presenting a thorough consideration of Ernst & Young's approach to the subject.**

From the start, the report focuses on restating GAO's former conclusions and recommendations made in 1997 instead of on its current assignment, which is to review the Ernst & Young report. Nearly half of the draft report's text has little or nothing to do with the Ernst & Young study. We have previously documented serious reservations about the accuracy of GAO's earlier assessment and the validity of conclusions which are repeated in this new report. These concerns still stand.

See p. 30.

Mr. Bernard L. Ungar

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See GAO comment 1.

Not only is the early and extensive concentration on GAO's previous study confusing, more importantly, it has the effect of suggesting that GAO began this current task with the premise that there was only one valid approach to studying the courtroom issue. The report reiterates a single point more than a dozen times—namely, that Ernst & Young did not collect the types of data GAO recommended in 1997. This suggests that the simple fact that Ernst & Young used a different approach constitutes, *ipso facto*, a fatal flaw in GAO's view.

See GAO comment 2.

Determining whether Ernst & Young collected the types of data GAO had recommended was a valid line of inquiry, but a preoccupation with this single question seems to have precluded open-minded consideration of the merits of a slightly different approach designed by experts at Ernst & Young. There are significant parts of Ernst & Young's analysis that are either ignored or dismissed without much attention.

See GAO comment 3.

The report does not mention, for example, Ernst & Young's use of a significant study completed in 1998 by the National Center for State Courts. This study was done after GAO's 1997 study (and after the RAND paper), and it addressed one of the major factors for which GAO and RAND said further empirical analysis was needed. The National Center for State Courts' study showed the inaccuracy of predictions made by judges and attorneys about how long a given trial would last. This report demonstrated the unpredictability of trial length and it was influential to Ernst & Young's conclusion that courtroom use is highly reliant on unpredictable factors. Similarly important is the difficulty of predicting accurately whether a scheduled case will settle before trial, an issue the consultants explored in their interviews of judges. These unpredictable factors are not minor considerations for courtroom scheduling and use, they are vital.

See GAO comment 4.

Contrary to GAO's suggestion that an extensive data-collection exercise would have provided greater certainty and would have been done if there were not time constraints, Ernst & Young concluded that "data analysis alone cannot adequately assess the effect of courtroom availability on settlement rates, trial delays and delivering justice." Therefore, they decided to examine "the factors that determine how easily judges can share courtrooms, and the potential cost and operational impact of courtroom sharing...to establish whether courtroom sharing would significantly reduce courthouse construction costs and the implications for the administration of justice." These are practical questions.

The report does not mention that the RAND research note favored by GAO recognized that expert input on the implications for the administration of justice, and consideration of costs and potential benefits would be major components of research on

Mr. Bernard L. Ungar

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courtroom sharing. Ernst & Young addressed these aspects. The economic analysis done by Ernst & Young has already been mentioned above. Ernst & Young also demonstrated that the potential for courtroom sharing exists in very few courthouse projects because most are simply too small to consider it. They also obtained expert input through interviews and focus groups, and through observing the impact of courtroom-sharing in a district and discussing the practical implications with the judges, staff, attorneys and others affected. RAND had suggested the use of a focus group to obtain practitioner (i.e., judge) input. A full-day focus group, which included judges who had experience with courtroom-sharing, was an important empirical element of the Ernst & Young study.

See GAO comment 5.

It is particularly noteworthy, considering GAO's stated interest in the empirical analysis of courtroom sharing, that GAO denigrates the use of empirical information by Ernst & Young. The draft report states: "We are concerned about EY's use of the courthouse in Brooklyn, NY to illustrate that scheduling courtrooms in an actual sharing scenario would be problematic." Although GAO repeatedly calls for "actual" data, the actual experiences with courtroom sharing in Brooklyn are dismissed by GAO because reality tends to involve complicating factors. It would be wrong to brush aside valuable lessons learned from the real life courtroom-sharing experience in Brooklyn, which a United States Senator referred to as a "disaster." The judiciary cannot reasonably be expected to do so.

See pp. 31-32.

**5. The report overstates the likelihood that more data will "resolve" the courtroom-sharing question.**

GAO's report reflects scant respect for expert judgment—it dismisses the professional judgment applied by Ernst & Young and shows a high degree of skepticism about the value of the opinions of judges and other primary users and schedulers of courtrooms. Instead, the GAO draft report repeatedly expresses the view that what is needed to resolve the courtroom issue is "empirical" analysis, including more data on "actual courtroom use" and the "actual impact" of courtroom sharing.

While it is almost always possible to collect more data related to any question, there are many questions for which data will not provide answers. This is one of those questions. The Ernst & Young study described many factors relevant to the courtroom issue that are highly variable, unpredictable, or that cannot be measured empirically. It also noted the great variability in the system which precludes the feasibility of uniform standards.

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It should be recognized that most of the analysis that would be necessary to do what GAO suggests would be theoretical, not empirical. In contrast with empirical research which observes the effects of courtroom sharing, such as in the Brooklyn courthouse, the proposed research would involve statistical models and necessitate making up numerous assumptions in order to simulate, not measure, the effects of courtroom sharing. Some limited measurements may be possible. However, the effort to collect more data would be time-consuming and expensive, and, ultimately, it would provide no more conclusive information than we already have.

Most significantly, it is impossible to find a scientific way to measure what does not happen. Only through speculation about the planned or possible use of courtrooms could researchers account for events which do not occur or which do not take as long or take longer than scheduled. Research has already demonstrated that predictions of trial length are highly inaccurate.

GAO insists that more research will provide answers, but it seems almost certain that research so complicated and loaded with theoretical assumptions would not generate a high level of confidence about its accuracy or general applicability. GAO has recognized that there is considerable variability within the court system. Local factors and changes over time affect courtroom needs. Even the most sophisticated simulation is unlikely to tell us whether courtrooms in specific locations used by specific judges can effectively be shared. It should be recognized that such research, no matter how well done, will not achieve GAO's goal "to demonstrate empirically" the potential for courtroom sharing. A theoretical model might be easier to control than a real life Brooklyn situation, but it should not be mistaken with reality.

The report makes it clear that GAO has little regard for the application of expert judgement over mathematics. In the final analysis, however, expert judgement will be necessary to decide this issue.

See pp. 32-33.

**6. The draft report uses confusing figures to support the idea that another extensive study is "worth pursuing."**

There is no compelling justification provided by GAO to explain why another study of the subject would be cost-effective. GAO acknowledges that the study proposed would be lengthy and costly. To assess whether a costly study would be worthwhile, it is important to figure out how many courthouse projects are pending which will house a large enough number of district judges that would allow even the theoretical possibility of reducing the number of courtrooms. As mentioned earlier, Ernst & Young examined

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the profile of courthouses (with 91 percent having five or fewer active district judges), and concluded that the vast majority of courthouses are too small to consider courtroom sharing. There seems to be general agreement that reducing the number of courtrooms in smaller courthouses is probably not feasible.

The judiciary's facilities program, with the help of the General Services Administration and the Congress, has resulted in the timely construction of courthouse facilities to accommodate new judges and staff. Because the planning process works, facilities will be available for new judgeships recently approved and still pending in Congress.

In fact, there are only five courthouse projects<sup>2</sup> in the judiciary's long-range facilities plan that will have more than five active district judges in them, two of which will house only six active district judges. If larger facilities are not planned, courtroom reductions are not practicable. Also, a point worth repeating is that reductions in the short term only abbreviate the useful life of a new facility. Already, new courthouses are built only to accommodate a court's needs for ten years. Additional renovations or construction are both disruptive and expensive.

These facts certainly raise doubts about GAO's contention that another study is worth pursuing. Not only would the study be expensive, it would also divert the time of judges and staff from the courts' main function of administering justice.

**7. GAO's proposal to establish courtroom use criteria is alarming.**

GAO's suggestion that the judiciary "establish criteria for determining effective courtroom utilization" may at first blush appear to be a reasonable proposition. There is, however, a fundamental problem with the notion that the justice system can be operated under factory-like standards.

If efficiency were valued more highly in our society than fairness, fewer courtrooms could be built. For example, we could simply impose time limits on justice—by regulating the amount of time each litigant has to present a case, the amount of time parties have to question witnesses, and the time juries have to reach their verdicts. By recasting the process into a judicial form of "Beat The Clock," courtrooms could be efficiently scheduled and cases disposed expeditiously. In addition, more could be done to avoid the use of courtrooms. Filing fees could be raised so that only the wealthiest

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<sup>2</sup>Excluding projects already authorized.

See pp. 33-34.

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would turn to the courts for resolving disputes. Also, rights to a trial could be limited and the right to a “speedy” trial for defendants could be suspended.

It would be a mistake to dismiss these ideas as hyperbole. If one focuses on the use and cost of courtrooms, more complicated and fundamental values may be overlooked. For example, the logic of economy would suggest to some analysts that a settlement is a preferred outcome for all cases, but there are many who believe that our system of justice would be at risk without public trials. Our judicial system continually balances efficiency and fairness. The idea that, in the service of economy and efficiency, courtroom use can be regulated should be recognized for what it is—that is, a step down a path that has the potential to endanger cherished values. GAO should reconsider the idea that it is possible or desirable to establish a standard for courtroom utilization.

#### **Conclusion**

For those who may be largely unfamiliar with the judicial process but who know that courtrooms are not in use all the time, it seems unquestionably wasteful for judges to have dedicated courtrooms. It is clearly not easy for some to understand the important difference between the use of a courtroom and the need for a courtroom.

A simple analogy might be helpful. Consider why office workers do not share telephones. Or, using a more costly example, consider why next-door neighbors do not normally opt to share a single car when it would undoubtedly save each a sizeable amount of money. Neither one uses a car full time—their combined car usage hours are lower than the total hours available and both cars regularly sit idle. It is easy to think of many reasons why having immediate access to a vehicle or to a phone is important. One can readily imagine how sharing a single phone among staff or one car between households, and managing the sharing process to accommodate all requirements and unpredictable events, would present serious difficulties. For most people, purely economic concerns are superceded by these other concerns. While it may be more expensive, it is reasonable for each to own a car, and for each worker to be provided a phone. Likewise, the courtroom is a critical resource for every judge.

The judiciary has no interest in constructing courtrooms that are not needed. We have demonstrated our willingness to reduce the number of courtrooms planned, when it is determined that this is feasible and reasonable. The need for a courtroom is not a matter of administrative convenience; it involves constitutional rights embodied in the Fifth, Sixth and Seventh Amendments. The judiciary has been entrusted by the people to make vital decisions for this nation. Those who think the judiciary is unfit to make a

See GAO comment 6.

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reasonable determination about its courtroom requirements might pause to ask themselves why.

The judiciary commissioned a comprehensive study, and Ernst & Young spent a full year studying this issue and others. They have made extensive recommendations that will take the General Services Administration and the judiciary years to evaluate and integrate into the planning and construction process. We could initiate another study of the identical issues, as GAO proposes, but it is highly unlikely that any result short of GAO's previous conclusions will be accepted by GAO. We could be at this a long, long time. We do not believe further statistical study at this time would be productive.

Sincerely,



Clarence A. Lee, Jr.  
Associate Director

cc: Honorable Jane R. Roth  
Honorable John W. Lungstrum

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The following are GAO's comments on AOC's letter dated November 3, 2000.

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## GAO Comments

1. AOC said that our report had the effect of suggesting that GAO began this current task with the premise that there was only one valid approach to studying the courtroom issue. Our objective was to determine whether the EY study provided sufficient data and analysis to show if, and to what extent, courtroom sharing may be feasible. As stated in the report, certain stakeholders and organizations we identified that have done research in this area recognize that existing data and analysis on courtroom use were limited and could not resolve the courtroom-sharing debate and that more data and analysis were needed. Given this, our focus was to examine the study from the perspective of whether it provided this type of data and analysis.

2. AOC said that our report ignored or dismissed without much attention significant parts of EY's analysis. AOC went on to mention EY's use of a study completed in 1998 by the National Center for State Courts that demonstrated the unpredictability of trial length. AOC also mentioned the difficulty of predicting accurately whether a scheduled case will settle before trial. Although we did not specifically mention the National Center for State Courts study, we discuss various uncertainties throughout the report—such as whether a trial will take place, how long a trial will last, and whether an emergency proceeding will require the immediate use of a courtroom—that may affect courtroom scheduling. The important issue here is that the impact these uncertainties actually have on the need for a courtroom is unknown because there is very little data and analysis. For example, the judiciary cites predicting trial length as a major uncertainty in scheduling courtrooms. However, it has not provided any convincing data or analysis showing how this uncertainty would affect a scheduling process, especially considering that available data suggest that courtroom use is low. As previously mentioned, our data showed that district courtrooms we examined were used for trials, on average, less than one-third of the 250 federal work days in 1995 and that the use of courtroom for trials varied by location. Also, our data showed that in 1995, at least one courtroom in two courthouses was unused every workday of the year.

3. AOC said that EY concluded that “data analysis alone cannot adequately assess the effect of courtroom availability on settlement rates, trial delays and delivering justice.” AOC said that EY decided to examine “the factors that determine how easily judges can share courtrooms, and the potential



cost and operational impact of courtroom sharing... to establish whether courtroom sharing would significantly reduce courtroom construction cost and the implications for administration of justice.” We agree that data analysis alone cannot resolve the courtroom-sharing issue. However, as pointed out in the report, a cost-effective empirical assessment that would generate actual courtroom use data and analysis is key to informed decisionmaking about the feasibility of courtroom sharing. Without these data, it will be difficult to determine more conclusively whether courtroom-sharing opportunities exist.

4. AOC said that our report does not mention Rand’s recognition that expert input on the implications for the administration of justice and consideration of cost and potential benefits would be major components of research on courtroom sharing. AOC said that EY addressed these aspects and we did not. AOC also said that EY obtained expert input through interviews and focus groups and through observing the impact of courtroom sharing in a district and discussing the implication with judges, staff, attorneys, and others affected. We disagree that we did not recognize many of EY’s efforts in doing its study. We pointed out in our report that the EY study was informative and that EY staff, among other things, visited federal courthouses, interviewed key stakeholders and judicial personnel, and conducted focus groups with judges. Our report also said that EY visited 14 locations, observed courtroom use and spoke with users, examined calendars, analyzed statistical data and courthouse planning documents, conducted interviews with dozens of individuals who had different experiences and views, and held focus groups. To address AOC’s concern, however, we clarified our report to reflect our point that expert judgement is important but that it needs to supplement, not be a substitute for, empirically based data and analysis on courtroom use.

5. AOC said that we denigrated EY’s use of the empirical information it collected related to the Brooklyn case study. We disagree—our intent was to show that EY had reservations about using Brooklyn to assert that the problems there were due entirely to sharing. As pointed out in the report, we had concerns about EY’s use of the Brooklyn courthouse to illustrate that scheduling courtrooms in an actual courtroom-sharing scenario would be problematic. We explained that in appendix B of EY’s study, EY points out that the Brooklyn facility has been partially demolished in preparation for the new courthouse and that it was difficult for EY to determine the extent to which operational difficulties were caused by courtroom sharing or by inadequate facilities. However, in the body of the study, EY said that operational difficulties in the Brooklyn courthouse demonstrated that

courtroom sharing has been costly to administer in terms of staff time, disruptions, and ineffective administration of justice. Given the presence of the other variables related to the inadequacy of the facility, it was our view that the Brooklyn courthouse may not be a good example for demonstrating courtroom sharing feasibility. EY staff we interviewed agreed with our assessment, and we stand by our observation.

6. AOC's conclusion states that for those who may be largely unfamiliar with the judicial process, it seems unquestionably wasteful for judges to have dedicated courtrooms. AOC then goes on to present analogies to demonstrate why each judge needs a courtroom, comparing the reasons judges cannot share courtrooms to the reasons neighbors do not share a car and workers do not share phones. AOC's point is that cars and phones are not used full-time, yet it is accepted that they will not be shared because of the unpredictable nature of their use. AOC's reasoning is problematic because cars and phones cost much less than courtrooms, which EY reported cost \$1.5 million each. Furthermore, to use AOC's analogy, if the cars in question were used by public officials and data on the use of the cars were comparably as low as available data on courtroom use, we believe having one car for two or more officials would be worth considering to save taxpayer dollars. This would certainly be a logical reason for an organization to maintain a "pool" of vehicles for staff to use when needed rather than providing a dedicated vehicle to each person. Also, AOC's observation that it seems unquestionably wasteful to those outside the judiciary for judges to have dedicated courtrooms is exactly why we believe the judiciary needs better justification for this practice.

# Comments From the Chair, Judicial Conference, Committee on Security and Facilities

## *Committee on Security and Facilities Judicial Conference of the United States*

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October 31, 2000

Mr. Bernard L. Ungar  
Director, Physical Infrastructure  
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Washington, D.C. 20548

Dear Mr. Ungar:

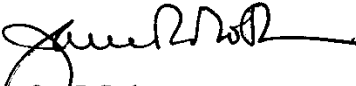
I am writing with regard to the draft report entitled *Courthouse Construction: Consultant's Study Lacks Sufficient Data and Analysis to Resolve the Courtroom Sharing Issue*. I concur with the separate comments submitted by the Administrative Office of the United States Courts.

In my capacity as the Chair of the Committee on Security and Facilities of the Judicial Conference of the United States, I am familiar with the methodologies used by Ernst & Young to analyze the subject of courtroom-sharing, and I am satisfied that the consultant's approach was sound. Also, as a former trial lawyer and district judge, I understand the value of unfettered access to a courtroom and its importance to the fair and efficient administration of justice. From both of these perspectives, I believe Ernst & Young has made reasonable recommendations regarding the courtroom needs of active district judges.

Given the complexity of this subject, I do not agree that a matter of such importance to the administration of justice can be answered by the collection and manipulation of data. There are too many unmeasurable ingredients to achieve the clarity of results or the uniform answer that is sought by the General Accounting Office.

Planning an adequate number of courtrooms is of vital importance for the effective operation of the federal courts as well as for ensuring our courthouse facilities remain serviceable. In a growing judiciary, short-term reductions will necessitate longer-term costs. The Committee on Security and Facilities has and will continue to respect the need for economy in balancing these requirements and in recommending facilities policies for the judicial branch.

Sincerely,



Jane R. Roth

See pp. 34-35.

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